

# STAFF REPORT

**DATE:** October 30, 2019

**TO:** Board of Adjustment

**FROM:** Zoning Administration  
Planning & Development  
Services Department

**ACTIVITY NO. T19SA00393**

**C10-19-17 EL SUR RESTAURANT / OMAR AND ISELA MEJIA / 5602 EAST  
22<sup>ND</sup> STREET / C-1**

The applicant's property is an approximately 15,357 square foot corner lot zoned C-1, and is developed with a restaurant and a second building that is currently used as storage. The applicant is proposing to split the second building into two separate buildings. The first, Building B, will be utilized as additional restaurant space. The second, Building C, will be a separate office. The applicant is also proposing to utilize an outdoor dining patio for the restaurant. The expansion of the restaurant is greater than 25% which triggers full site code compliance.

## **THE APPLICANTS' REQUESTS TO THE BOARD**

The applicant is requesting the following variances:

1. Delete the requirement to provide 8 canopy trees throughout the vehicle use areas.
2. Modify the required 10' wide street landscape border along the 22<sup>nd</sup> Street Frontage road.
3. Modify the required 10' wide street landscape border along Jefferson Avenue.
4. Modify the required 30" screen between the vehicle use area and Jefferson Avenue.
5. Allow the continued use of the right-of-way for maneuvering directly into or from the parking spaces located on the north side of the development.
6. Delete the required sidewalk between Building 'C' and the two parking spaces at the northeast corner of the development.
7. Delete the required sidewalk along the 22<sup>nd</sup> Street Frontage road, all as shown on the submitted plans.

### **APPLICABLE TUCSON ZONING CODE SECTIONS**

Tucson *Unified Development Code (UDC)* sections applicable to this project include, in part, the following:

*Section 4.7.20 Commercial Zone (C-1) and Table 4.8-4 Permitted Uses – Commercial and Mixed Use Zones*, which provide the criteria for commercial development in the C-1 zone; and

*Section 7.4.6 Motor Vehicle and Bicycle Parking*, for required number of parking spaces, location of parking and maneuverability criteria; and

*Section 7.6 Landscaping and Screening*, for commercial landscaping and screening standards for the development; and

*Section 7.8 Access*, for pedestrian refuge, surface and access requirements.

### **GENERAL DEVELOPMENT INFORMATION**

#### **Zoning and Land Use**

**SITE: ZONED C-1; (Restaurant)**

North: Zoned C-1; (Commercial)

South: Zoned C-1/R-3; (Alley/Residential)

East: Zoned C-1; (Commercial)

West: Zoned C-1; (Commercial use)

### **RELATED PLAN REVIEWS**

#### **Engineering**

The Engineering Section of Planning and Development Services Department has no objection/adverse comments, with the exception of seeking a Parking Design Modification Request (PDMR) for reduced Parking Area Access Lane (PAAL) width and a Technical Standards Modification Request (TSMR) for pedestrian access requirements. This site has no floodplain or special drainage concerns.

#### **Design Review Board (DRB)**

Zoning regulations require requests for landscaping and/or screening variances to be reviewed by the DRB for recommendation to the Board of Adjustment. The variance requests were reviewed by the DRB (Case DRB-19-13) on October 4, 2019. A summary of the DRB meeting reviewing this case is attached to this staff report as Attachment A. The DRB recommends the following:

1. Denial of Variance request 1;
2. Approval of Variance request 2;
3. Denial of Variance request 3;
4. Denial of Variance request 4;

In addition, at the DRB meeting the applicant requested a fifth variance under the DRBs purview; to allow the existing 4' tall concrete masonry unit (CMU) wall to remain in lieu of providing the required 5' tall wall along the south property line. The DRB recommended denial of this variance request. The applicant has since revised the plans and is proposing to meet the UDC requirement of a 5' tall CMU wall along the south property line. Therefore, the variance request is no longer the subject of this Board of Adjustment public hearing.

#### **BOARD OF ADJUSTMENT FINDINGS**

The Board of Adjustment can hear and decide a variance request from the regulations listed in the Unified Development Code. The Board may grant a variance only if it finds the following:

1. That, because there are special circumstances applicable to the property, strict enforcement of the UDC will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district.
2. That such special circumstances were not self-imposed or created by the owner or one in possession of the property.
3. That the variance granted is subject to such conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.
4. That, because of special circumstances applicable to the property, including its size, shape, topography, location, and surroundings, the property cannot reasonably be developed in conformity with the provisions of the UDC.
5. That the granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.
6. That the proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase congestion, or substantially diminish or impair property values within the neighborhood.
7. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the UDC provisions which are in question.

#### **ZONING ADMINISTRATION CONSIDERATIONS**

The applicant's property is an approximately 15,357 square foot corner lot zoned C-1, and is developed with a restaurant and a second building used as storage. The applicant is proposing to split the second building into two separate buildings. The first, Building B, will be utilized as additional restaurant space. The second, Building C, will be a separate office. The applicant is also proposing to utilize an

outdoor dining patio for the restaurant. The changes to the site trigger full code compliance.

**Parking, location and maneuverability**

Per UDC Section 7.4.6, regarding the number, location and permitted areas for maneuvering of parking spaces; the applicant is requesting to continue to allow the use of the right-of-way for maneuvering directly into or from the parking spaces located on the north side of the development. The site conditions require the allowance of maneuvering directly into or from the parking spaces on the north side of the property from the right-of-way as the space in front of the buildings minimally meets the required length of a parking space. To alter the configuration of parking spaces on the north of the property would mean a significant reduction in the number of parking spaces provided and the applicant would not meet the UDC required parking standards. In addition, other similarly situated businesses with frontage along the 22<sup>nd</sup> street frontage road utilize the right-of-way for maneuvering into or from parking spaces along the frontage.

**Pedestrian access**

Per *UDC Section 7.8*, changes of use should provide reasonable improvements for pedestrian facilities, in accordance with substantive requirements of Section 7-01.0.0, Pedestrian Access of the Technical Standards Manual. The minimum width of 4' wide pedestrian refuge is required between a building and parking area, and to connect to dumpsters and all buildings on site, comprised of a specific form of acceptable materials. Due to site constraints, such as existing building location, parking spaces located with maneuverability directly into or from the right-of-way and parking spaces located within close proximity to the existing building, the applicant is requesting to delete the required sidewalk along the 22<sup>nd</sup> Street frontage road and to delete the required sidewalk between Building 'C' and the two parking spaces at the northeast corner of the development, all as shown on the submitted plans.

**Landscaping and Screening**

Per *UDC Section 7.6*, a minimum 10' wide street landscape border is required along both 22<sup>nd</sup> Street frontage and Jefferson Avenue. Due to existing site constraints, such as the location of the existing buildings, parking abutting the right-of-way and the existence of utility wires, the applicant proposes to modify the 10' wide onsite street landscape border on both street frontages and, in lieu, provide landscaping where practicable along both street frontages. Specifically, the applicant is proposing to remove the existing sign and existing storage unit, landscaping will be included in the northwest corner of the lot to include portions of 22<sup>nd</sup> Street frontage and Jefferson Avenue frontage.

In addition, per *UDC Section 7.6*, a 30" screen between the vehicle use area and Jefferson Avenue is required. Due to site constraints such as existing utility lines, applicant is requesting to modify this requirement and will provide the screening where feasible.

Further, per *UDC Section 7.6*, one (1) canopy tree is required for each four (4) motor vehicle parking spaces in the vehicular use area. The applicant is requesting

the deletion of the eight (8) required canopy trees throughout the vehicular use area. Existing site constraints, such as existing building location, parking spaces located with maneuverability directly into or from the right-of-way and parking spaces located within close proximity to the existing building prevent the applicant from installing canopy trees in the vehicle use area. Additionally, safe pedestrian access requires an unobstructed path of circulation. To utilize space for canopy trees in the north parking lot would obstruct the required 4' wide pedestrian access between the north parking lot and the buildings.

### **Discussion**

The existing restaurant building is 1,344 sq. ft and is proposed to remain for restaurant use. The applicant is also proposing to divide the second building into two separate attached buildings. Building B, 808 sq. ft., will be utilized for the restaurant and Building C, 1006 sq. ft., will be a separate office building. The applicant is also proposing to utilize an existing 589 sq. ft. dining patio, built without permits, for the restaurant use.

With these expansions the owners are proposing to make improvements to the property. The use of the 808 sq. ft in Building B and the use of the 589 sq. ft outdoor dining patio for restaurant use exceed twenty-five percent expansion of the use and or building area, and full code compliance is triggered. In turn, such site improvements cause applicable parking and maneuvering, pedestrian access routes, landscaping and screening elements to be reviewed.

### **Conclusion**

There are special circumstances, such as existing building location, parking spaces located with maneuverability directly into or from the right-of-way and the existence of utility lines within the required landscape area that impact the development; and given these circumstances, the property cannot be reasonably developed in complete conformance with UDC provisions. Further the project is the minimum requested to afford relief given the applicant is bringing the site closer into conformance with improving the property by providing strategic landscaping, minimum pedestrian access with accessible route, staff can support the requested variances, with conditions.

### **NEIGHBORHOOD CONTACT (BY APPLICANTS)**

See the attached neighborhood notification dated August 22, 2019, and the meeting sign-in sheet dated September 5, 2019.

### **PLANNING & DEVELOPMENT SERVICES RECOMMENDATION**

PDSD staff recommends approval of the applicant's requested variances, subject to the following conditions:

1. Landscape borders to be provided on 22<sup>nd</sup> Street frontage and Jefferson Avenue where feasible and in the northwest corner of the property.
2. 30" screening along Jefferson Avenue to be provided where feasible, subject to approval by Tucson Electric Power.

It is the opinion of staff that granting of the variances, with these conditions, will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located, will not be detrimental to public welfare or injurious to other property or improvements, and will not substantially diminish or impair property values within the neighborhood.

Mallory Ress, Planner  
for  
Russlyn Wells, Zoning Administrator

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## ATTACHMENT A

On October 4, 2019 the Design Review Board (DRB) reviewed Case DRB-19-13 / C10-19-17 / T19SA00393 / DP18-0037.

The applicant requested that the DRB recommend approval of the following variances to the required landscaping and screening standards specified in the Unified Development Code (UDC):

1. Delete the requirement to provide 8 canopy trees throughout the vehicle use areas; and
2. Delete the required 10' wide street landscape border along the 22<sup>nd</sup> Street Frontage road; and
3. Delete the required 10' wide street landscape border along Jefferson Avenue; and
4. Delete the required 30" screen between the vehicle use area and Jefferson Avenue; and
5. Allow the existing 4' tall concrete masonry unit (CMU) wall to remain as constructed in lieu of providing the required 5' tall wall along the south property line.

Below is a summary of the observations and discussion that took place at the DRB meeting in relation to each of the requested variances under the DRB's purview:

1. Delete the requirement to provide 8 canopy trees throughout the vehicle use areas:  
The DRB indicated to the applicant adding canopy trees could still be explored, specifically along the northern and southern parking spaces, and at the northwest corner of the property, if overhead electric lines can be avoided. Coordination with zoning and landscape reviewers of development package will need to be coordinated.

Motion was made recommending denial of variance. Motion passed unanimously.

2. Delete the required 10 foot- wide street landscape border along the 22<sup>nd</sup> Street frontage:  
The DRB found the applicant is doing everything possible, given the site limitations, to meet UDC Section 5.12.7.C.

Motion was made recommending approval of variance. Motion passed unanimously.

3. Delete the required 10' wide street landscape border along Jefferson Avenue:  
The DRB found the applicant could still explore: installing 5 feet of streetscape in the right-of-way of Jefferson Avenue, if the Department of Transportation approves it; reconfiguring the bike parking spaces to allow for more landscaping area; and installing more landscape materials along the western property line, by shifting the southern parking spaces further to the east. Coordination with zoning, transportation, and landscape reviewers of development package will need to be coordinated.

Motion was made recommending denial of variance. Motion passed unanimously.

4. Delete the required 30" screen between the vehicle use area and Jefferson Avenue:  
The DRB found the applicant has the opportunity to fulfill the 30" screen requirement between the vehicle use area and Jefferson Avenue.

Motion was made recommending denial of variance request. Motion passed unanimously.

5. Allow the existing 4' tall concrete masonry unit (CMU) wall to remain as constructed in lieu of providing the required 5' tall wall along the south property line:  
The DRB found the applicant can accommodate on site the required five-foot high CMU wall line along the southern property line.

Motion was made recommending denial of variance request. Motion passed unanimously.